

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MIGUEL GALINDO SIFUENTES,

Petitioner,

vs.

P. BRAZELTON, Warden,

Respondent.

No. C 09-2902 PJH

**ORDER RE FOURTH
AMENDED PETITION**

This is a habeas corpus case originally filed pro se by a state prisoner pursuant to 28 U.S.C. § 2254. On August 10, 2012, two days after the court denied petitioner's request to file a fourth amended petition, petitioner retained counsel. Subsequently, on August 21, 2012, the court granted petitioner's stipulated request for leave to file a fourth amended petition and set related deadlines. On October 28, 2012, petitioner filed a request for a three-month extension to file the fourth amended petition. Petitioner subsequently filed his proposed order in support of the request on November 1, 2012, the day the fourth amended petition was due. That same day, November 1, 2012, petitioner filed the fourth amended petition.

Given the age of the case, the fact that petitioner has already had nearly two and one-half months to prepare the fourth amended petition (and has in fact filed one), and the absence of sufficient reasons for the additional time, the court finds that good cause does not exist for an extension of time and DENIES the request for an extension of time. The

1 court will treat the fourth amended petition filed November 1, 2012 as the operative petition.

2 That petition contains five claims for relief:

3 (1) that his Fifth, Sixth, and Fourteenth Amendment due process, equal

4 protection, and fair trial rights were violated when the prosecution

5 peremptorily challenged nine potential jurors on the basis of their race;

6 (2) that his Fifth, Sixth, and Fourteenth Amendment due process, equal

7 protection, and fair trial rights were violated when the prosecution challenged

8 for cause two potential jurors on the basis of their race;

9 (3) application of California's felony murder rule to petitioner violated the

10 Eighth Amendment's Cruel and Unusual Punishment Clause;

11 (4) application of California's felony murder rule violated petitioner's right

12 to a jury trial because it enabled the judge, rather than the jury, to determine

13 malice aforethought, an element of the charge; and

14 (5) petitioner's due process and fair trial rights were violated when several

15 jurors regularly slept through key portions of his trial.

16 Liberally construed, the claims appear colorable under 28 U.S.C. § 2254 and merit
17 an answer from respondent. The deadlines set forth in the court's August 21, 2012 order

18 remain in effect. Respondent's answer is due no later than **December 3, 2012**, and

19 petitioner's traverse is due no later than **January 2, 2013**.

20 **IT IS SO ORDERED.**

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22 Dated: November 2, 2012



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PHYLLIS J. HAMILTON
United States District Judge
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